

NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Canspec Materials Testing, Inc. and Local 2, International Union of Operating Engineers, AFL-CIO. Case 22-CA-20742

February 29, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a charge filed by the Union on June 8, 1995, the General Counsel of the National Labor Relations Board issued a complaint on November 29, 1995, against Canspec Materials Testing, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On January 18, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On January 22, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 14, 1995, notified the Respondent that unless an answer were received by December 21, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Middlesex,

New Jersey, has been engaged in providing non-destructive testing and industrial X-ray services. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, purchased and received at its Middlesex, New Jersey facility goods valued in excess of \$50,000 directly from points outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees engaged in pipeline and directly related non-destructive testing including all employees who furnish rigs and equipment in the performance of this service, but excluding all office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act, and all other employees.

From about October 1, 1991, until about May 1, 1995, the Union had been the exclusive collective-bargaining representative of the employees in the above unit employed by Canspec Testing, Inc. (Canspec) and during that period of time, the Union had been recognized as such representative by Canspec. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from October 1, 1991, to October 1, 1996.

About May 1, 1995, the Respondent purchased the business of Canspec Testing, Inc. (Canspec), and since then has continued to operate the business of Canspec in basically unchanged form, and has employed as a majority of its employees individuals who were previously employees of Canspec. Based on these facts, the Respondent has continued the employing entity and is a successor to Canspec. Therefore, since about May 1, 1995, the Union has been the designated collective-bargaining representative of the Respondent's employees in the above unit.

About June 5, 1995, the Union, by letter, requested that the Respondent recognize it as the exclusive collective-bargaining representative of the unit, and since that time, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

About May 12, 1995, the Respondent announced and implemented a reduction in employees' wages, announced that it was changing health care plans provided to employees, made changes regarding onstream pay structures, and announced a new progressive dis-

cipline policy. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

About May 12, 1995, the Respondent announced to its employees that it would be a nonunion operation.

CONCLUSION OF LAW

By the announcing to its employees that it would be a nonunion operation, the Respondent has been interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. By refusing to recognize and bargain with the Union, announcing and implementing a reduction in employees' wages, announcing that it was changing health care plans provided to employees, making changes regarding onstream pay structures, and announcing a new progressive discipline policy, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has unlawfully reduced employees' wages, announced changes in health care plans provided to employees, made changes regarding onstream pay structures, and announced a new progressive discipline policy, we shall order the Respondent, on request, to reinstate the wages, hours, and working conditions in effect before it made its unlawful changes, to rescind any disciplinary actions taken in accord with its unlawfully implemented discipline policy, and to make whole its unit employees for any losses attributable to its unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), and *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Finally, having found that the Respond-

ent has failed and refused to bargain with the Union, we shall order it to do so, on request.

ORDER

The National Labor Relations Board orders that the Respondent, Canspec Materials Testing, Inc., Middlesex, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Local 2, International Union of Operating Engineers, AFL-CIO, as the exclusive collective-bargaining representative of the unit:

All full-time and regular part-time employees engaged in pipeline and directly related non-destructive testing including all employees who furnish rigs and equipment in the performance of this service, but excluding all office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act, and all other employees.

(b) Unilaterally announcing or implementing a reduction in unit employees' wages, announcing that it is changing health care plans provided to unit employees, making changes regarding onstream pay structures, and announcing a new progressive discipline policy, without providing the Union notice and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct or the effects of this conduct.

(c) Announcing to employees that it would be a nonunion operation.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, reinstate the wages, hours, and working condition in effect for the unit employees before the unlawful changes and rescind any disciplinary actions taken in accord with the unlawfully implemented progressive discipline policy.

(b) Make whole the unit employees for any losses attributable to its unlawful unilateral conduct, as set forth in the remedy section of this Decision.

(c) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Middlesex, New Jersey, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 29, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT fail or refuse to recognize or bargain with Local 2, International Union of Operating Engineers, AFL-CIO, as the exclusive collective-bargaining representative of the unit:

All full-time and regular part-time employees engaged in pipeline and directly related non-destructive testing including all employees who furnish rigs and equipment in the performance of this service, but excluding all office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act, and all other employees.

WE WILL NOT unilaterally announce or implement a reduction in our unit employees' wages, announce that we are changing health care plans provided to our unit employees, make changes regarding onstream pay structures, or announce a new progressive discipline policy, without providing the Union notice and without affording the Union an opportunity to bargain with us with respect to this conduct and the effects of this conduct.

WE WILL NOT announce to employees that we will be a nonunion operation.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, reinstate the wages, hours, and working condition in effect before our unlawful changes and rescind any disciplinary actions taken in accord with our unlawfully implemented progressive discipline policy.

WE WILL make whole our unit employees for any losses attributable to our unlawful unilateral conduct, as set forth in a decision of the National Labor Relations Board.

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of our unit employees.

CANSPEC MATERIALS TESTING, INC.